

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

WILLIE MCNAIR,)	
)	
Plaintiff,)	
)	
v.)	No. 2:06-cv-695-WKW
)	
RICHARD ALLEN, et al.,)	
)	
Defendants.)	
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JAMES CALLAHAN,)	
)	
Plaintiff,)	
)	
v.)	No. 2:06-cv-919-WKW
)	
RICHARD ALLEN , et al.,)	
)	
Defendants.)	

**DEFENDANTS' MOTION TO SUBMIT ADDITIONAL GROUNDS AND
AUTHORITY**

The defendants move this Court for leave to file additional grounds and authority to support their dispositive motions that are based on the statute of limitations. See Docs. 43, 48. The defendants argued in those motions that the plaintiffs' claims are due to be summarily dismissed because they were filed after the expiration of the two-year statute of limitations.

On April 17, 2007, in Jones v. Allen, 2007 WL 1140416, Civil Action No. 2:06cv986-MHT (M.D. Ala.) (Slip Copy), United States District Judge Myron Thompson denied a similar motion requesting summary dismissal based on the statute of limitations. The Jones opinion held, among other things, that a claim such as the present one, "where the plaintiff seeks an injunction pursuant to 42 U.S.C. § 1983 to prevent an unconstitutional tortious act from occurring in the future," cannot be barred by the statute of limitations. Id. In addition, the Jones opinion held that the statute of limitations does not begin running until the plaintiff suffers the "harm" complained of, which does not occur until execution. Id. However, the Jones opinion also emphasized that the plaintiff's unreasonable delay in filing a lawsuit could be considered in the context of a laches defense, a defense that takes into account "equitable considerations." Id. at *8.

Although defendants respectfully disagree with the Jones opinion regarding the statute of limitations, even if the Court was correct in that case, plaintiff Jones' claims, as well as the claims brought in this case, are time-barred by the doctrine of laches. The answer filed in

this case pleaded the defense of laches along with the statute of limitations. See Doc. 8 at p. 7 ("Plaintiff's claims are barred by laches and applicable statute of limitations."). The defenses are similar and defendants respectfully believe they should be considered by the Court at the same time. Thus, the defendants request leave to submit a motion regarding the defense of laches as additional grounds to summarily dismiss the plaintiffs' lawsuit. That motion is being filed simultaneously with this motion for leave.

The defendants continue to believe their dispositive motions regarding the statute of limitations should be granted. And, the Jones opinion has done nothing to diminish that belief. However, in addition to the statute-of-limitations defense, this lawsuit can also be dismissed under the doctrine of laches.

For the foregoing reasons, the defendants respectfully request that the Court grant them leave to file a motion requesting summary dismissal based on the doctrine of laches.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on the 24th day of April, 2007, a copy of the foregoing has been electronically filed with the Clerk of the Court using the CM/ECF system, which will electronically send a copy of the same to the following:

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